

United States of America vs.

United States District Court for

NORTHERN DISTRICT OF OKLAHOMA

DEFENDANT

JERRY BRIAN HICKOK

DOCKET NO.

77-CR-144-B

JUDGMENT

AO-245 (6/74)

COUNSEL

In the presence of the attorney for the government
the defendant appeared in person on this date

MONTH DAY YEAR
3 29 78

☐ WITHOUT COUNSEL

However the court advised defendant of right to counsel and asked whether defendant desired to have counsel appointed by the court and the defendant thereupon waived assistance of counsel.

☒ WITH COUNSEL

Kenneth L. Stainer, Retained

(Name of counsel)

PLEA

☐ GUILTY, and the court being satisfied that
there is a factual basis for the plea,

☐ NOLO CONTENDERE,

☒ NOT GUILTY

FINDING &
JUDGMENT

There being a finding/verdict of

☒ NOT GUILTY. Defendant is discharged, and the Indictment
is dismissed.
☐ GUILTY.

Defendant ~~is not guilty as found by the Court~~
on the ruling on motion for Judgment of Acquittal.

SENTENCE
OR
PROBATION
ORDER

SPECIAL
CONDITIONS
OF
PROBATION

ADDITIONAL
CONDITIONS
OF
PROBATION

COMMITMENT
RECOMMEN-
DATION

The court orders commitment to the custody of the Attorney General and recommends,

It is ordered that the Clerk deliver
a certified copy of this judgment
and commitment to the U.S. Mar-
shal or other qualified officer.

SIGNED BY

☒ U.S. District Judge

☐ U.S. Magistrate

CERTIFIED AS A TRUE COPY ON

THIS DATE

By

() CLERK

() DEPUTY

Date

3-29-78

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

FILED

JAMES C. BOONE, # 93623)

Movant,.)

v.)

UNITED STATES OF AMERICA,)

Respondent.)

Nos. 77-C-434-C
76-CR-113

MAR 29 1978

Jack C. Silver, Clerk
U. S. DISTRICT COURT

ORDER

On March 16, 1978 the Court entered an Order denying Movant's Motion to Reconsider the Order of this Court entered on December 30, 1977 denying Movant's Motion under 28 U.S.C. § 2255. In the March 16, 1978 Order denying Movant's Motion to Reconsider the Court stated:

"From a review of the file, it appears that since the filing of Movant's Motion to Reconsider, Movant has been released from the Regional Treatment Center and is now serving the special parole term of 6 years."

On March 28, 1978 the Court received a letter from the Movant quoting the above language of the Court's Order of March 16, 1978 and requesting clarification of that language. In his letter Movant advised the Court that he was presently incarcerated at the Federal Correctional Institution at El Reno, Oklahoma serving the sentence imposed by this Court on November 3, 1976. On that date Movant was sentenced to "Two (2) Years Imprisonment and a special parole term of Six (6) Years, to commence at the expiration of and run consecutive to any term imposed by the State Court."

The reference made by the Court in its Order of March 16, 1978 to the file refers to a memorandum in the file dated January 27, 1978 from the United States Court Clerk's Office for this district in which the Clerk's Office stated:

"On January 25, 1978 Mr. Boone filed a motion to reconsider with the request that we mail him a file stamed (sic) copy. We did so, however, today it was returned to us with a note on the envelope that he has been paroled. I fowarded the copy on to his Tulsa address."

The information with respect to the status of the Movant as having been "paroled" is obviously erroneous and should be disregarded. It was the intention of the Court that the federal sentence would run consecutive to the state court sentence. The transcript of the proceedings held on November 3, 1976 in Movant's case No. 76-CR-113 at the time of sentencing in this Court clearly shows that the sentence imposed by this Court was to run consecutive to any sentence imposed by the state court. In imposing sentence, the Court stated:

"The defendant is charged in one count. It is therefore adjudged that the defendant is hereby committed to the custody of the Attorney General for imprisonment for a period of two years. In addition thereto, the Court imposes a special parole term of six years on the defendant. It will run consecutive to any term imposed by the state court."

Therefore, Movant's Motion to Reconsider is denied.

Dated this 29th day of March, 1978.


H. DALE COOK
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT

Northern District of Oklahoma

FILED

MAR 28 1978

Jack C. Silver, Clerk
U. S. DISTRICT COURT

United States of America


vs.

MILTON RAY KIRVEN

Criminal No. 78-CR-8-B

ORDER FOR DISMISSAL

Pursuant to Rule 48(a) of the Federal Rules of Criminal
Procedure and by leave of court endorsed hereon the United States
Attorney for the Northern District of Oklahoma
hereby dismisses ~~the~~ Count I of the Indictment against
(indictment, information, complaint)
MILTON RAY KIRVEN defendant.


Asst. United States Attorney

Leave of court is granted for the filing of the foregoing dismissal.


United States District Judge

Date: MARCH 28, 1978

DOJ

FORM OBD-113

8-27-74

FILED

MAR 28 1978

Jack C. Silver, Clerk
U. S. DISTRICT COURT

UNITED STATES DISTRICT COURT

Northern District of Oklahoma

United States of America

vs.

DONA MARIE HERRINGTON

Criminal No. 77-CR-139-B ✓

ORDER FOR DISMISSAL

Pursuant to Rule 48(a) of the Federal Rules of Criminal
Procedure and by leave of court endorsed hereon the United States
Attorney for the Northern District of Oklahoma
hereby dismisses Counts 2,3,5,6,7 & 8 of the Indictment against
(indictment, information, complaint)
Dona Marie Herrington defendant.

Kenneth P. Snook
Asst. United States Attorney

Leave of court is granted for the filing of the foregoing dismissal.

Cecil E. Barrow
United States District Judge

Date: March 28, 1978

FILED

UNITED STATES DISTRICT COURT

MAR 28 1978

Northern District of Oklahoma

Jack C. Silver, Clerk
U. S. DISTRICT COURT

United States of America

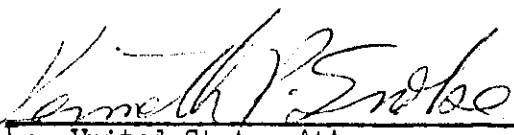
Criminal No. 77-CR-136-B ✓

vs.

MILTON RAY KIRVEN

ORDER FOR DISMISSAL

Pursuant to Rule 48(a) of the Federal Rules of Criminal
Procedure and by leave of court endorsed hereon the United States
Attorney for the Northern District of Oklahoma
hereby dismisses ~~the~~ Count II of the Indictment against
(indictment, information, complaint)
Milton Ray Kirven defendant.


Asst. United States Attorney

Leave of court is granted for the filing of the foregoing dismissal.


United States District Judge

Date: MARCH 28, 1978

DOJ

FORM OBD-113

8-27-74

MAR 28 1978

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

Jack C. Silver, Clerk
U. S. DISTRICT COURT

UNITED STATES OF AMERICA,)
)
Plaintiff,)
v.)
)
WILLIE PAUL SMITH,)
)
Movant.)

NOS. 78-C-59-B
77-CR-62 ✓

O R D E R

The Court has for consideration the motion pursuant to 28 U.S.C. § 2255 filed by counsel on behalf of Willie Paul Smith. The cause has been assigned civil Case No. 78-C-59 and docketed in his criminal Case No. 77-CR-62.

Movant is a prisoner in the Creek County Jail, Sapulpa, Oklahoma, pursuant to State convictions and sentences imposed January 31, 1978, of two years in CRF-77-67 and one year in CRF-74-38. He will thereafter serve a sentence of eighteen months imposed August 23, 1977, by this Court in Case No. 77-CR-62 pursuant to his conviction on plea of guilty to Count One of an indictment charging interstate transportation of stolen firearms in violation of 18 U.S.C. § 922(i). The Movant was charged in one additional count which was dismissed.

Movant in his § 2255 motion demands his release from custody and as grounds therefor claims that he is being deprived of his liberty in violation of his rights guaranteed by the Constitution of the United States of America. In particular, Movant claims that:

His plea of guilty was not knowing and voluntary in that he understood at sentencing that the sentence imposed would be served in a Federal penitentiary and any sentence received in pending State cases would run concurrently with the federally imposed time.

The Court has carefully reviewed this matter and being fully advised in the premises finds that a response and evidentiary hearing are not necessary and that the motion should be denied.

When taking his plea of guilty, the Court fully explained to the Defendant, Movant herein, the maximum sentence that could be imposed for the crime, that the Court was not bound by any agreement regarding sentence, and could impose any sentence permitted by law including the maximum. Movant was then given the maximum sentence pursuant to 18 U.S.C. §§ 4216:5010(e) for study, report and recommendation to the Court as to the appropriate sentence. Following receipt of that report, which was

reviewed with Movant and his counsel in open Court, definitive sentence was imposed August 23, 1977, to three years eligible for parole in the discretion of the Parole Commission pursuant to 18 U.S.C. § 4205(a). Further, it was recommended that the Movant receive vocational training during his period of incarceration.

Defense counsel reminded the Court after sentence had been imposed that the Movant was still facing charges in the State of Oklahoma. It was recognized in open Court in the Movant's presence by the sentencing Judge and defense counsel that under State of Oklahoma law the State Trial Judge could not impose his sentence, if any, to run concurrently with the Federal sentence, but that this was a matter that could be called to this Federal Court's attention if necessary by appropriate motion. Further, it was discussed in open Court that the Movant had been at all times before this Court on ad prosequendum writ, borrowed from the State of Oklahoma, and that any sentence imposed by the State Court would run first in time. Therefore, Movant's contention that his plea to this Court was not knowing and voluntary is without merit. All of the discussion as to the possibility of a concurrent sentence occurred long after the plea and after definitive sentence had been imposed.

This Court did not impose the Federal sentence to run concurrently with the prospective State sentences. Even had it done so, the applicable Federal statutes provide in pertinent part:

18 U.S.C. § 3568: "The sentence of imprisonment of any person convicted of an offense shall commence to run from the date on which such person is received at the penitentiary, reformatory, or jail for service of such sentence. . . . No sentence shall prescribe any other method of computing the term."

18 U.S.C. § 4082: "(A) A person convicted of an offense against the United States shall be committed, for such term of imprisonment as the court may direct, to the custody of the Attorney General of the United States, who shall designate the place of confinement where the sentence shall be served."

Pursuant to these Federal Statutes, the Attorney General has the exclusive power to designate the place where Federal sentences shall be served. Stillwell v. Looney, 207 F.2d 359 (10th Cir. 1953); Werntz v. Looney, 208 F.2d 102, 103 n. 2 (10th Cir. 1953). The United States District Court must be cognizant of and give effect to all applicable United States statutes. Miller v. Willingham, 400 F.2d 873 (10th Cir. 1968).

Our Tenth Circuit Court of Appeals has held that the place of confinement is no part of the sentence, but is a matter for the determination of the Attorney General; and therefore, that it is beyond the power of a Federal Court to order that its sentence be served concurrently with a State sentence. The concurrency language is surplusage or a recommendation as to place of confinement. It is equally clear that the initial concurrence, although beyond the power of the Court, does not render a Federal sentence so imposed invalid. Bowen v. United States, 174 F.2d 323 (10th Cir. 1949); Joslin v. Moseley, 420 F.2d 1204 (10th Cir. 1969); Sluder v. Malley, No. 77-1454 unpublished (10th Cir. filed Dec. 22, 1977). The Attorney General has the discretion, may, and frequently does, honor the recommendation that the Federal sentence be served concurrently with a State sentence in a State institution. See, Stillwell v. Looney, Supra.; Werntz v. Looney, Supra. However, the Attorney General is under no obligation to do so and could disregard the sentencing Court's recommendation. See, Bowen v. United States, Supra.

Further, this motion under consideration if treated as a motion for modification of sentence pursuant to Rule 35, Federal Rules of Criminal Procedure, is out of time. The 120-day jurisdictional period within which a Rule 35 motion may be considered has expired.

IT IS, THEREFORE, ORDERED that the motion pursuant to 28 U.S.C. § 2255 on behalf of Willie Paul Smith be and it is hereby denied and the case is dismissed.

Dated this 28th day of March, 1978, at Tulsa, Oklahoma.



CHIEF JUDGE, UNITED STATES DISTRICT
COURT FOR THE NORTHERN DISTRICT OF
OKLAHOMA

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

MAR 28 1978

Jack C. Silver, Clerk
U. S. DISTRICT COURT

UNITED STATES OF AMERICA,

Plaintiff,

v.

EMMETT LAVERNE MUNDEN,

Movant.

NOS. 78-C-66-B
77-CR-9 ✓

O R D E R

The Court has for consideration a motion pursuant to 28 U.S.C. § 2255 filed pro se, in forma pauperis, by Emmett Laverne Munden. The cause has been assigned civil Case No. 78-C-66-B and docketed in his criminal Case No. 77-CR-9.

Movant is a prisoner in the Federal Correctional Institution, El Reno, Oklahoma, pursuant to sentence upon revocation of probation in the criminal cause. In his § 2255 motion, Movant demands his release from custody and as grounds therefor claims that he is being deprived of his liberty in violation of his rights guaranteed by the Constitution of the United States of America. In particular, Movant claims that:

He has been twice placed in jeopardy for the same offense when probation, for technical violations, was not revoked and the Movant required to serve the remaining period of the thirty month probation sentence, but rather was sentenced to three years confinement to be followed by three years probation.

Because of this Court's ruling on that issue, the remaining issue presented need not be considered.

In his criminal cause, Case No. 77-CR-9, the Movant was charged by two-count indictment in the United States District Court in Kansas with a Dyer Act in violation of 18 U.S.C. § 2312 in Count One, and with selling and disposing of a stolen vehicle in violation of 18 U.S.C. § 2313 in Count Two. He entered a plea of guilty upon transfer to this District from Kansas under Rule 20, Federal Rules of Criminal Procedure. On February 15, 1977, he was sentenced on each count in accordance with 18 U.S.C. § 3651 to thirty-three months with the condition that he be confined in a jail-type institution for a period of three months, and the execution of the remainder of the sentence was suspended and he was placed on probation for thirty months, the sentence on Count Two to run concurrently with the sentence on Count One.

On November 15, 1977, following probation revocation hearing, probation was revoked and the Movant was sentenced to the custody of the Attorney General for three years on Count One and the imposition of sentence

was suspended and he was placed on probation for three years on Count Two, the probationary period to follow the incarceration in Count One.

The Court having carefully reviewed the § 2255 motion finds that response and evidentiary hearing are not required and that the motion should be sustained in part. That is, the sentence imposed November 15, 1977, at probation revocation in excess of thirty months should be vacated, set aside and held for naught. Further, Movant should receive credit for the time served to date in jail-type custody on said thirty-month period. Imposition of sentence in excess of what the law permits does not render the sentence or authorized portion of the sentence void. Browning v. Crouse, 356 F.2d 178 (10th Cir. 1966) cert. denied 384 U. S. 973 (1966).

18 U.S.C. § 3653 provides in pertinent part:


"As speedily as possible after arrest the probationer shall be taken before the court for the district having jurisdiction over him. Thereupon the court may revoke the probation and require him to serve the sentence imposed, or any lesser sentence, and, if imposition of sentence was suspended, may impose any sentence which might originally have been imposed."

Pursuant to that section of the Federal Code, since the original sentence on February 15, 1977, was to thirty-three months, this Court was limited on probation revocation to the term of the original sentence or a lesser sentence. However, within that limit, sentencing on revocation of probation does not place the defendant in double jeopardy. Further, the full thirty-month probationary term may be imposed with no credit on said period for the time released on probation. Thomas v. United States, 327 F.2d 795 (10th Cir. 1964) cert. denied 377 U. S. 1000 (1964).

IT IS, THEREFORE, ORDERED that the motion pursuant to 28 U.S.C. § 2255 of Emmett Laverne Munden be and it is hereby sustained in part, and the sentence imposed upon revocation of probation on November 15, 1977, in so far as it exceeds thirty (30) months is vacated, set aside and held for naught.

IT IS FURTHER ORDERED that the Movant, Emmett Laverne Munden, receive credit on the term of thirty months for all jail-type custody served to date in connection with the revocation of his probation.

Dated this 28th day of March, 1978, at Tulsa, Oklahoma.


CHIEF JUDGE, UNITED STATES DISTRICT
COURT FOR THE NORTHERN DISTRICT OF
OKLAHOMA

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,)

v.)

No. 77-C-486-C

No. 76-CR-53 ✓

PATRICK DEAN SHAW,)
39815-115)

Movant.)

FILED

MAR 27 1978

Jack C. Silver, Clerk
U. S. DISTRICT COURT

ORDER

The above-named Movant (defendant), a prisoner in the United States Penitentiary at El Reno, Oklahoma has filed herein a Motion to Vacate, Set Aside, or Correct Sentence pursuant to 28 U.S.C. § 2255. After a plea of guilty to having violated Title 21, U.S.C. § 846, this Court on July 23, 1976, sentenced defendant Patrick Dean Shaw, to two (2) years imprisonment and an additional special parole term of three (3) years, to commence at the expiration of the two (2) year sentence. The Court further ordered that the defendant may become eligible for parole at such time as the U. S. Parole Commission may determine as provided in Title 18, U.S.C. § 4205(b)(2).

Ground One of defendant's motion claims that his "Conviction (was) obtained by a violation of the protection against double jeopardy." In support of his claim the defendant states that he "went to court (state) twice on this original crime and it was dismissed each and every time as the record will reflect. Now we have the Federal, United States District Court changing the wording on the same crime and calling it a conspiracy in order to take this defendant to trial after this named defendant (sic) had been to court twice and the case dismissed each time in the one and only crime that was committed." Movant cites in support of his claim the case of Brown v. Ohio, 432 U.S. 161 (1976). The Brown court stated:

"The established test for determining whether two offenses are sufficiently distinguishable to permit the imposition of cumulative punishment was stated in Blockburger v. United States, 284 U.S. 299, 304 (1932):

'The applicable rule is that where the same act or transaction constitutes a violation of two distinct statutory provisions, the test to be applied to determine whether there are two offenses or only one, is whether each provision requires proof of a fact which the other does not'

"This test emphasizes the elements of the two crimes. 'If each requires proof of a fact that the other does not, the Blockburger test is satisfied, notwithstanding a substantial overlap in the proof offered to establish the crimes. . . .' Iannelli v. United States, 420 U.S. 770, 785 n. 17 (1975)."

In his motion the Defendant does not state that he was tried on the state court charges. He only states in a conclusory way that he went "to Court (state) twice" and that the charges were "dismissed each and every time". Defendant has not established that he was ever placed in jeopardy in the state court proceedings on the offense for which defendant was convicted in the case before this Court.

In Bell v. State of Kansas, 452 F.2d 783 (10th Cir. 1971) Cert.Den. 92 S.Ct. 2421, 406 U.S. 974, the Court stated:

"* * * for the double jeopardy provision to apply, the offense charged and tried in the first case and the offense charged in the second case must be identical in fact and law."

Therefore, the defendant's first ground for relief is without merit.

As his second ground for relief, the defendant alleges that his court appointed counsel, Phil Frazier, was ineffective in his representation of the defendant. In particular, the defendant claims that his lawyer told him "that

he would not have to go to prison and that if he plead guilty, ehich (sic) this defendent (sic) did do, that the maximum he would get would be a suspended sentence and time on probation." Defendant further states that he "entered his the defendent's (sic) plea of guilty only after he the defendent (sic) was promised by his attorney who represented the Federal Government that all he the defendent (sic) would receive would be a probated sentence."

A reading of the transcript of the proceedings in this Court at the time of the Arraignment and Plea on June 21, 1976 and June 22, 1976 and the Sentencing on July 23, 1976 clearly show that the defendant understood what he was charged with in the indictment; that he had discussed the plea with his attorney; that he had the right to trial by jury; that his plea of guilty was voluntarily made and completely and exclusively of his own free will and accord; that he had not been forced, coerced, threatened or promised anything to cause him to enter a plea of guilty; that the maximum sentence the Court could impose was imprisonment not to exceed Fifteen years, a fine not to exceed \$25,000, or both fine and imprisonment and that the Court must also impose a special parole term of no less than three years; and that he was satisfied with his counsel, Mr. Frazier.

After being advised by the Court of his rights and the consequences of his plea of guilty, the defendant entered a plea of guilty. The defendant then under oath detailed the facts surrounding his participation in the alleged conspiracy to distribute certain non-narcotic controlled substances and narcotic controlled substances.

Concerning the alleged plea bargaining, the transcript of the proceedings reveals the following statements by the

Court, counsel for the government, counsel for the defendant, and the defendant:

"THE COURT: I will ask counsel for the government and Mr. Frazier, as counsel for the defendant: Has there been any plea bargaining?

MR. BAKER: No, Sir.

MR. FRAZIER: There has been none, Your Honor.

THE COURT: Mr. Shaw, the Court has been informed there has been no plea bargaining, agreements, nothing at all like that. Is that your understanding, also?

THE DEFENDANT: Yes, sir.

THE COURT: Well, the Court would want you to know that even though there hasn't been any, even if there had of, even if there had of, the Court wouldn't have been a party to them, wouldn't have participated in them and did not do so and would be in no way bound by any such agreements or plea bargaining or discussions. You understand that?

THE DEFENDANT: Yes, sir.

(Tr. 19.) * * * * *

THE COURT: You have informed the Court that your plea would be voluntarily given, of your own free will and accord, and that you have not been in any way coerced, forced, threatened or promised anything for a plea of guilty. Is that correct?

THE DEFENDANT: Yes, sir.

THE COURT: All right. Do you have any questions whatsoever before the Court asks you what your plea is?

THE DEFENDANT: None.

THE COURT: All right. How do you plead to Count I of the indictment?

THE DEFENDANT: Guilty.

(T. 20.) * * * * *

THE COURT: All right.

All right, Mr. Shaw. Based upon your statements as to the factual matters and the statement of your counsel and the government counsel, the Court finds that there is a factual basis for your plea of guilty; that your plea is made voluntarily. And that's true, is it not?

THE DEFENDANT: Yes, sir.

THE COURT: And with an understanding of the charge against you and with the possible consequences of a plea of guilty. And all that's true also, is it not?

THE DEFENDANT: Yes, sir.

THE COURT: All right. Therefore, the Court accepts your plea of guilty and finds that you are guilty as charged." (Tr. 24.)

At the time of sentencing the Court stated to the defendant that he would hear anything he had to say in his own behalf and would receive any additional information that the defendant desired the Court to consider before pronouncing sentence. The defendant responded that he had no comment other than as to his employment; that he had been employed steadily over the last 11 years, 4-1/2 years with his present employer and that he didn't have time to be a drug dealer because his job kept him too involved. Following the imposition of sentence by the Court the defendant made no comment about the sentence but did ask that the Court stay the execution of the sentence for 30 days which the Court granted but only for a stay of approximately two weeks.

It is thus apparent that the defendant's second claim for relief is totally insubstantial and devoid of merit. The guidelines for determining when defense counsel was ineffective or incompetent were set forth in Ellis v. State, 430 F.2d 1352, 1356 (10th Cir. 1970).

"It is the general rule that relief from a final conviction on the ground of incompetent or ineffective counsel will be granted only when the trial was a farce or a mockery of justice, or was shocking to the conscience of the reviewing court, or the purported representation was only perfunctory, in bad faith, a sham, a pretense, or without adequate opportunity for conference and preparation. Goforth v. United States (10th Cir. 1963), 314 F.2d 868 ***.' Williams v. Beto, 354 F.2d 698, 704 (5th Cir. 1965). And this test is applicable to cases in which counsel is retained by or for an accused as well as to cases in which counsel is appointed to represent an indigent defendant. Bell v. State of Alabama, 367 F.2d 243 (5th Cir. 1966).

The files and record of the proceedings of the Arraignment, Plea and Sentencing of the defendant unequivocally support the conclusion that the defendant fully understood the nature of the proceedings and the consequences of his guilty plea. Under these circumstances it is unnecessary to hold a factual hearing in connection with defendant's motion. Semet v. United States, 369 F.2d 90 (10th Cir. 1966).

Accordingly, defendant's motion for relief herein is denied.

It is so Ordered this 27th day of March, 1978.


H. DALE COOK
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT

Northern District of Oklahoma

United States of America)

vs.)

Deloris Ann Stanley)

Criminal No. 78-CR-37

FILED
IN OPEN COURT

MAR 24 1978

Jack C. Silver, Clerk
U. S. DISTRICT COURT

ORDER FOR DISMISSAL

Pursuant to Rule 48(a) of the Federal Rules of Criminal
Procedure and by leave of court endorsed hereon the United States
Attorney for the Northern District of Oklahoma
hereby dismisses ~~the~~ Counts II & III of Indictment against
(indictment, information, complaint)
Deloris Ann Stanley, defendant.

George Carrasquillo *George Carrasquillo*
Asst. United States Attorney

Leave of court is granted for the filing of the foregoing dismissal.

3/24 Dale Book
United States District Judge

Date: March 24, 1978

DOJ

FORM OBD-113

8-27-74

UNITED STATES DISTRICT COURT

Northern District of Oklahoma

FILED
IN OPEN COURT

MAR 24 1978 *pm*

Jack C. Silver, Clerk
U. S. DISTRICT COURT

United States of America

vs.

Donald Ray Samuel

Criminal No. 78-CR-35 ✓

ORDER FOR DISMISSAL

Pursuant to Rule 48(a) of the Federal Rules of Criminal
Procedure and by leave of court endorsed hereon the United States
Attorney for the Northern District of Oklahoma
hereby dismisses ~~xxx~~ Counts III & V of Indictment against
(indictment, information, complaint)
Donald Ray Samuel, defendant.

GEORGE CARRASQUILLO *George Carrasquillo*

Asst. United States Attorney

Leave of court is granted for the filing of the foregoing dismissal.

W. Dale Cook
United States District Judge

Date: *March 24, 1978*

DOJ

FORM OBD-113

8-27-74

DEFENDANT

MILTON RAY KIRVEN

DOCKET NO. ➔

78-CR-8-B

JUDGMENT AND PROBATION/COMMITMENT ORDER

AO-245 (6/74)

In the presence of the attorney for the government
the defendant appeared in person on this date ➔

MONTH	DAY	YEAR
3	23	78

COUNSEL

☐ WITHOUT COUNSEL

However the court advised defendant of right to counsel and asked whether defendant desired to have counsel appointed by the court and the defendant thereupon waived assistance of counsel.

☒ WITH COUNSEL

Daniel D. Draper, Jr., Retained

(Name of counsel)

PLEA

☒ GUILTY, and the court being satisfied that
there is a factual basis for the plea,☐ NOLO CONTENDERE,☐ NOT GUILTY

There being a finding/verdict of

<input type="checkbox"/> NOT GUILTY. Defendant is discharged
<input checked="" type="checkbox"/> GUILTY.

FINDING &
JUDGMENTDefendant has been convicted as charged of the offense(s) of **having violated Title 18, U.S.C.,
Sections 842(a)(1) and 844(a), as charged in Count two of the Indictment.**

The court asked whether defendant had anything to say why judgment should not be pronounced. Because no sufficient cause to the contrary was shown, or appeared to the court, the court adjudged the defendant guilty as charged and convicted and ordered that: ~~the defendant be committed to the custody of the Attorney General for a period of five years~~

SENTENCE
OR
PROBATION
ORDER

Count two - The imposition of sentence is suspended and the defendant is placed on probation for a period of two (2) years from this date, under the Young Adult Youth Correction Act, pursuant to T. 18, U.S.C., Section 4216:5010(a).

SPECIAL
CONDITIONS
OF
PROBATIONADDITIONAL
CONDITIONS
OF
PROBATION

In addition to the special conditions of probation imposed above, it is hereby ordered that the general conditions of probation set out on the reverse side of this judgment be imposed. The Court may change the conditions of probation, reduce or extend the period of probation, and at any time during the probation period or within a maximum probation period of five years permitted by law, may issue a warrant and revoke probation for a violation occurring during the probation period.

COMMITMENT
RECOMMEN-
DATION

The court orders commitment to the custody of the Attorney General and recommends,

It is ordered that the Clerk deliver a certified copy of this judgment and commitment to the U.S. Marshal or other qualified officer.

SIGNED BY

☐ U.S. District Judge☒ U.S. Magistrate

CERTIFIED AS A TRUE COPY ON

THIS DATE 3-23-78

By *J. Vaughn*

() CLERK

() DEPUTY

Date 3-23-78

United States of America vs.

United States District Court for

NORTHERN DISTRICT OF OKLAHOMA

DEFENDANT

JEFFREY DALE MILLS

DOCKET NO.

78-CR-1-B

JUDGMENT AND PROBATION/COMMITMENT ORDER

AO-245 (6/74)

In the presence of the attorney for the government
the defendant appeared in person on this date

MONTH	DAY	YEAR
3	23	78

COUNSEL

☐ WITHOUT COUNSEL

However the court advised defendant of right to counsel and asked whether defendant desired to have counsel appointed by the court and the defendant thereupon waived assistance of counsel.

☒ WITH COUNSEL

Lloyd Holtz, Retained

(Name of counsel)

PLEA

☒ GUILTY, and the court being satisfied that
there is a factual basis for the plea,

☐ NOLO CONTENDERE,

☐ NOT GUILTY

There being a finding/~~verdict~~ of

☐ NOT GUILTY. Defendant is discharged

☒ GUILTY.

FINDING &
JUDGMENT

Defendant has been convicted as charged of the offense(s) of **having violated Title 18, U.S.C.,
Section 1014, as charged in the indictment.**

The court asked whether defendant had anything to say why judgment should not be pronounced. Because no sufficient cause to the contrary was shown, or appeared to the court, the court adjudged the defendant guilty as charged and convicted and ordered that: ~~he be committed to the custody of the Attorney General and recommended to the U.S. Marshal for confinement in the Federal Reformatory for Women at Alderson, West Virginia.~~

SENTENCE
OR
PROBATION
ORDER

The imposition of sentence is suspended and the defendant is hereby placed on probation for a period of One (1) year from this date, under the Federal Youth Correction Act, pursuant to T. 18, U.S.C., Section 5010(a).

SPECIAL
CONDITIONS
OF
PROBATION

ADDITIONAL
CONDITIONS
OF
PROBATION

In addition to the special conditions of probation imposed above, it is hereby ordered that the general conditions of probation set out on the reverse side of this judgment be imposed. The Court may change the conditions of probation, reduce or extend the period of probation, and at any time during the probation period or within a maximum probation period of five years permitted by law, may issue a warrant and revoke probation for a violation occurring during the probation period.

COMMITMENT
RECOMMEN-
DATION

The court orders commitment to the custody of the Attorney General and recommends,

It is ordered that the Clerk deliver a certified copy of this judgment and commitment to the U.S. Marshal or other qualified officer.

SIGNED BY

☒ U.S. District Judge

☐ U.S. Magistrate

CERTIFIED AS A TRUE COPY ON

MAR 23 1978

THIS DATE

By

Haughlin

() CLERK

(X) DEPUTY

Date

3-23-78

United States of America vs.

United States District Court for
NORTHERN DISTRICT OF OKLAHOMA

DEFENDANT

CAROL JEAN BARNETT EDWARDS

DOCKET NO.

77-CR-147-B

- CORRECTED -

JUDGMENT AND PROBATION/COMMITMENT ORDER

AO 245 (6/74)

In the presence of the attorney for the government
the defendant appeared in person on this date

MONTH	DAY	YEAR
3-	23	78

COUNSEL

☐ WITHOUT COUNSEL

However the court advised defendant of right to counsel and asked whether defendant desired to have counsel appointed by the court and the defendant thereupon waived assistance of counsel.

☒ WITH COUNSEL

Joseph Hull, III, Retained

(Name of counsel)

FILED

PLEA

☒ GUILTY, and the court being satisfied that
there is a factual basis for the plea,

☐ NOLO CONTENDERE,

☐ NOT GUILTY
MAR 23 1978

Jack C. Silver, Clerk
U. S. DISTRICT COURT

FINDING &
JUDGMENT

There being a finding/verdict of

☐ NOT GUILTY. Defendant is discharged

☒ GUILTY.

Defendant has been convicted as charged of the offense(s) of **having violated Title 18, U.S.C.,
Section 1012, as charged in the Information.**

SENTENCE
OR
PROBATION
ORDER

The court asked whether defendant had anything to say why judgment should not be pronounced. Because no sufficient cause to the contrary was shown, or appeared to the court, the court adjudged the defendant guilty as charged and convicted and ordered that: The defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of

**Twelve (12) months and on the condition that the defendant be confined in a
jail type institution for a period of three (3) months, the execution of the
remainder of the sentence of imprisonment is hereby suspended and the defendant
is placed on probation for nine (9) months.**

SPECIAL
CONDITIONS
OF
PROBATION

**The special condition of probation for that the defendant make restitution to
the U. S. Court Clerk in the amount of \$770.00.**

ADDITIONAL
CONDITIONS
OF
PROBATION

In addition to the special conditions of probation imposed above, it is hereby ordered that the general conditions of probation set out on the reverse side of this judgment be imposed. The Court may change the conditions of probation, reduce or extend the period of probation, and at any time during the probation period or within a maximum probation period of five years permitted by law, may issue a warrant and revoke probation for a violation occurring during the probation period.

COMMITMENT
RECOMMEN-
DATION

The court orders commitment to the custody of the Attorney General and recommends,

It is ordered that the Clerk deliver
a certified copy of this judgment
and commitment to the U.S. Mar-
shal or other qualified officer.

SIGNED BY

☒ U.S. District Judge

☐ U.S. Magistrate

Allen E. Bonar

Date

3-21-78

CERTIFIED AS A TRUE COPY ON

THIS DATE

By

() CLERK

() DEPUTY

United States of America vs.

United States District Court for

NORTHERN DISTRICT OF OKLAHOMA

DEFENDANT

MILTON RAY KIRVEN

DOCKET NO.

77-CR-136-B

JUDGMENT AND PROBATION/COMMITMENT ORDER

AO 245 (6/74)

COUNSEL

In the presence of the attorney for the government
the defendant appeared in person on this date

MONTH	DAY	YEAR
3	23	78

☐ WITHOUT COUNSEL

However the court advised defendant of right to counsel and asked whether defendant desired to have counsel appointed by the court and the defendant thereupon waived assistance of counsel.

☒ WITH COUNSEL

Daniel D. Draper, Jr., Retained

(Name of counsel)

PLEA

☒ GUILTY, and the court being satisfied that
there is a factual basis for the plea,

☐ NOLO CONTENDERE,

☐ NOT GUILTY

FINDING &
JUDGMENT

There being a finding ~~of~~ of

☐ NOT GUILTY. Defendant is discharged

☒ GUILTY.

Defendant has been convicted as charged of the offense(s) of **having violated Title 18, U.S.C.,
Section 842(a)(1), as charged in Count one of the Indictment.**

SENTENCE
OR
PROBATION
ORDER

The court asked whether defendant had anything to say why judgment should not be pronounced. Because no sufficient cause to the contrary was shown, or appeared to the court, the court adjudged the defendant guilty as charged and ordered that: ~~The defendant be committed to the custody of the Attorney General for the purpose of being deported.~~

Count one - The imposition of sentence is suspended and the defendant is placed on probation for a period of two (2) years from this date, under the Young Adult Youth Correction Act, pursuant to T. 18, U.S.C., Section 4216:5010(a), to run concurrently with probation imposed in case 78-CR-8.

SPECIAL
CONDITIONS
OF
PROBATION

FILED

MAR 23 1978

Jack C. Silver, Clerk
U. S. DISTRICT COURT

ADDITIONAL
CONDITIONS
OF
PROBATION

In addition to the special conditions of probation imposed above, it is hereby ordered that the general conditions of probation set out on the reverse side of this judgment be imposed. The Court may change the conditions of probation, reduce or extend the period of probation, and at any time during the probation period or within a maximum probation period of five years permitted by law, may issue a warrant and revoke probation for a violation occurring during the probation period.

COMMITMENT
RECOMMEN-
DATION

The court orders commitment to the custody of the Attorney General and recommends,

It is ordered that the Clerk deliver a certified copy of this judgment and commitment to the U.S. Marshal or other qualified officer.

SIGNED BY

☒ U.S. District Judge

☐ U.S. Magistrate

XXXXXXX

CERTIFIED AS A TRUE COPY ON

THIS DATE MAR 23 1978

By *W. H. H. H.*
() CLERK
() DEPUTY

Date

3-23-78

FILED

MAR 22 1978

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

Jack C. Silver, Clerk
U. S. DISTRICT COURT

UNITED STATES OF AMERICA,)	
)	
v.)	Plaintiff,
)	
CAROL JEAN BARNETT ETAME',)	
)	
)	Defendant.

NO. 77-CR-147-B

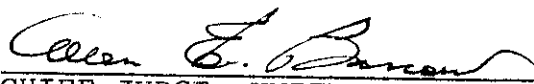
O R D E R

The Court has for consideration a motion pursuant to Rule 35, Federal Rules of Criminal Procedure, timely filed by counsel on behalf of Carol Jean Barnett Etame' herein.

Having studied the motion, carefully reviewed the file, and reflected on the sentence, and being fully advised in the premises, the Court finds that the sentence, under the circumstances before the Court, was lenient and proper, and the motion for modification of sentence should be denied.

IT IS, THEREFORE, ORDERED that the motion for discretionary modification of the sentence of Carol Jean Barnett Etame' be and it is hereby overruled.

Dated this 22nd day of March, 1978, at Tulsa, Oklahoma.


CHIEF JUDGE, UNITED STATES DISTRICT
COURT FOR THE NORTHERN DISTRICT OF
OKLAHOMA

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

FILED

MAR 22 1978

Jack C. Silver, Clerk
U. S. DISTRICT COURT

UNITED STATES OF AMERICA,)
)
Plaintiff,)
)
vs.) No. 76-CR-32-C
)
BILLIE MARTIN RENFRO,)
)
Defendant.)

O R D E R

The Court has before it for consideration the motion of the defendant, Billie Martin Renfro, for a reduction of sentence pursuant to Rule 35 of the Federal Rules of Criminal Procedure. The defendant entered pleas of not guilty to a two count indictment charging him with violations of 18 U.S.C. §§ 371, and 659. A jury verdict of guilty was returned against the defendant, and he was sentenced by the Court on May 5, 1976. He now asks the Court to modify this sentence.

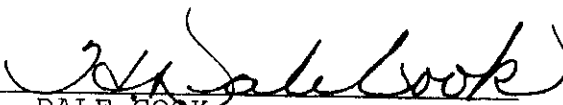
In considering defendant's motion for reduction of sentence, the Court has carefully reviewed the entire record and finds that the sentence imposed was appropriate, just, and reasonable under the circumstances of the case. Therefore, the motion for reduction of sentence should be overruled.

Defendant has requested that the Court grant him a hearing on this motion. The Court is not ordinarily required to hold a hearing on a Rule 35 motion. As is generally true of the Rule 35 motion, the matter of a hearing is addressed to the Court's discretion. United States v. Jones, 490 F.2d 207, 208 (6th Cir. 1974), cert. denied 416 U.S. 989, 94 S.Ct. 2397, 40 L.Ed.2d 768 (1974); United States v. Maynard, 485 F.2d 247, 248 (9th Cir. 1973); United States v. Krueger, 454 F.2d 1154, 1155 (9th Cir. 1972). The Court finds that a

hearing is not warranted in this instance.

For the foregoing reasons, defendant's motion for a reduction of sentence and his request for a hearing on said motion are hereby overruled.

It is so Ordered this 22nd day of March, 1978.


H. DALE COOK
United States District Judge

United States of America vs.

United States District Court for

NORTHERN DISTRICT OF OKLAHOMA

DEFENDANT

WILLIAM L. GIBBS

DOCKET NO.

78-CR-3-B

JUDGMENT AND PROBATION/COMMITMENT ORDER

AO 245 (6/74)

In the presence of the attorney for the government
the defendant appeared in person on this date

MONTH 3 DAY 21 YEAR 78

COUNSEL

☐ WITHOUT COUNSEL

However the court advised defendant of right to counsel and asked whether defendant desired to have counsel appointed by the court and the defendant thereupon waived assistance of counsel.

☒ WITH COUNSEL

Robert S. Durbin, Retained

(Name of counsel)

FILED

PLEA

☒ GUILTY, and the court being satisfied that
there is a factual basis for the plea,

☐ NOLO CONTENDERE,

☐ NOT GUILTY
MAR 21 1978

There being a finding/verdict of

☐ NOT GUILTY. Defendant is discharged

☒ GUILTY.

Jack C. Silver, Clerk
U. S. DISTRICT COURT

FINDING &
JUDGMENT

Defendant has been convicted as charged of the offense(s) of **having violated Title 18, U.S.C.,
Section 1014, as charged in Counts one and two of the Indictment.**

SENTENCE
OR
PROBATION
ORDER

The court asked whether defendant had anything to say why judgment should not be pronounced. Because no sufficient cause to the contrary was shown, or appeared to the court, the court adjudged the defendant guilty as charged and convicted and ordered that: ~~RECORDED~~

Counts One & Two - The imposition of sentence is suspended and the defendant is placed on probation for a period of Five (5) years as to each count, count two to run concurrently with count one.

SPECIAL
CONDITIONS
OF
PROBATION

The special condition of probation is that the defendant make restitution to the U. S. Court Clerk at payments of \$240.00 a month until paid in full. The balance is due in four and one-half (4½) years from this date. Payments to begin in April, 1978.

ADDITIONAL
CONDITIONS
OF
PROBATION

In addition to the special conditions of probation imposed above, it is hereby ordered that the general conditions of probation set out on the reverse side of this judgment be imposed. The Court may change the conditions of probation, reduce or extend the period of probation, and at any time during the probation period or within a maximum probation period of five years permitted by law, may issue a warrant and revoke probation for a violation occurring during the probation period.

COMMITMENT
RECOMMEN-
DATION

The court orders commitment to the custody of the Attorney General and recommends,

It is ordered that the Clerk deliver a certified copy of this judgment and commitment to the U.S. Marshal or other qualified officer.

SIGNED BY

☒ U.S. District Judge

~~U.S. District Judge~~

CERTIFIED AS A TRUE COPY ON

THIS DATE

By

() CLERK

() DEPUTY

Date 3-21-78

DEFENDANT

CAROL JEAN BARNETT ETAMÉ'

DOCKET NO. ➔

77-CR-147-B

JUDGMENT AND PROBATION/COMMITMENT ORDER

AO 245 (6/74)

COUNSEL

In the presence of the attorney for the government
the defendant appeared in person on this date ➔

MONTH	DAY	YEAR
3	21	78

☐ WITHOUT COUNSEL

However the court advised defendant of right to counsel and asked whether defendant desired to have counsel appointed by the court and the defendant thereupon waived assistance of counsel.

☒ WITH COUNSEL

Joseph Hall, III, Retained

(Name of counsel)

FILED

PLEA

☒ GUILTY, and the court being satisfied that
there is a factual basis for the plea,

☐ NOLO CONTENDERE,

☐ NOT GUILTY

MAR 21 1978

FINDING &
JUDGMENT

There being a finding/verdict of

☐ NOT GUILTY. Defendant is discharged

☒ GUILTY.

Jack C. Silver, Clerk
U. S. DISTRICT COURT

Defendant has been convicted as charged of the offense(s) of **having violated Title 18, U.S.C.,
Section 1012, as charged in the Information.**

SENTENCE
OR
PROBATION
ORDER

The court asked whether defendant had anything to say why judgment should not be pronounced. Because no sufficient cause to the contrary was shown, or appeared to the court, the court adjudged the defendant guilty as charged and convicted and ordered that: The defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of

**Twelve (12) months and on the condition that the defendant be confined in a
jail type institution for a period of three (3) months, the execution of the
remainder of the sentence of imprisonment is hereby suspended and the defendant
is placed on probation for nine (9) months**

SPECIAL
CONDITIONS
OF
PROBATION

**The special condition of probation is that the defendant make restitution in
accordance with the State of Oklahoma's order.**

ADDITIONAL
CONDITIONS
OF
PROBATION

In addition to the special conditions of probation imposed above, it is hereby ordered that the general conditions of probation set out on the reverse side of this judgment be imposed. The Court may change the conditions of probation, reduce or extend the period of probation, and at any time during the probation period or within a maximum probation period of five years permitted by law, may issue a warrant and revoke probation for a violation occurring during the probation period.

COMMITMENT
RECOMMEN-
DATION

The court orders commitment to the custody of the Attorney General and recommends,

It is ordered that the Clerk deliver
a certified copy of this judgment
and commitment to the U.S. Mar-
shal or other qualified officer.

SIGNED BY

☒ U.S. District Judge

☐ U.S. Magistrate

CERTIFIED AS A TRUE COPY ON

THIS DATE

By

() CLERK

() DEPUTY

Date 3.21.78

DEFENDANT

JOE EDWARD HANKES

DOCKET NO.

77-CR-135-B

JUDGMENT AND PROBATION/COMMITMENT ORDER

AO-245 (6/74)

COUNSEL

In the presence of the attorney for the government the defendant appeared in person on this date

MONTH DAY YEAR
3 21 78

☐ WITHOUT COUNSEL

However the court advised defendant of right to counsel and asked whether defendant desired to have counsel appointed by the court and the defendant thereupon waived assistance of counsel.

☒ WITH COUNSEL

James Fransein, Appt.

(Name of counsel)

FILED

PLEA

☒ GUILTY, and the court being satisfied that there is a factual basis for the plea,

☐ NOLO CONTENDERE,

☐ NOT GUILTY
MAR 21 1978

FINDING & JUDGMENT

There being a finding/verdict of

☐ NOT GUILTY. Defendant is discharged

☒ GUILTY.

Jack C. Silver, Clerk
U. S. DISTRICT COURT

Defendant has been convicted as charged of the offense(s) of **having violated Title 18, U.S.C., Section 495, as charged in the indictment.**

SENTENCE OR PROBATION ORDER

The court asked whether defendant had anything to say why judgment should not be pronounced. Because no sufficient cause to the contrary was shown, or appeared to the court, the court adjudged the defendant guilty as charged and convicted and ordered that: The defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for ~~any term~~ **Maximum period of Ten (10) years for a study as described in T. 18, U.S.C., Section 4205(d), the results of such study to be furnished this court within 90 days, whereupon the sentence of imprisonment herein imposed may be subject to modification in accordance with T. 18, U.S.C., Section 4205(c).**

SPECIAL CONDITIONS OF PROBATION

ADDITIONAL CONDITIONS OF PROBATION

In addition to the special conditions of probation imposed above, it is hereby ordered that the general conditions of probation set out on the reverse side of this judgment be imposed. The Court may change the conditions of probation, reduce or extend the period of probation, and at any time during the probation period or within a maximum probation period of five years permitted by law, may issue a warrant and revoke probation for a violation occurring during the probation period.

COMMITMENT RECOMMENDATION

The court orders commitment to the custody of the Attorney General and recommends,

It is ordered that the Clerk deliver a certified copy of this judgment and commitment to the U.S. Marshal or other qualified officer.

SIGNED BY

☒ U.S. District Judge

☐ U.S. Magistrate

CERTIFIED AS A TRUE COPY ON

THIS DATE

By

() CLERK

() DEPUTY

Date 3-21-78

United States of America vs.

United States District Court for
NORTHERN DISTRICT OF OKLAHOMA

DEFENDANT

JOHN ANTHONY TRANGRADI

DOCKET NO. ➤

77-CR-116-B

JUDGMENT AND PROBATION/COMMITMENT ORDER

AO 245 (6/74)

COUNSEL

In the presence of the attorney for the government
the defendant appeared in person on this date ➤

MONTH DAY YEAR
3 . 21 78

☐ WITHOUT COUNSEL

However the court advised defendant of right to counsel and asked whether defendant desired to have counsel appointed by the court and the defendant thereupon waived assistance of counsel.

☒ WITH COUNSEL

Don McCorkell, Appt.

(Name of counsel)

FILED

PLEA

☒ GUILTY, and the court being satisfied that
there is a factual basis for the plea,

☐ NOLO CONTENDERE,

☐ NOT GUILTY

MAR 21 1978

There being a finding/verdict of

☐ NOT GUILTY. Defendant is discharged

☒ GUILTY.

Jack C. Silver, Clerk
U. S. DISTRICT COURT

FINDING &
JUDGMENT

Defendant has been convicted as charged of the offense(s) of **having violated Title 18, U.S.C.,
Section 1623, as charged in Count two of the indictment.**

SENTENCE
OR
PROBATION
ORDER

The court asked whether defendant had anything to say why judgment should not be pronounced. Because no sufficient cause to the contrary was shown, or appeared to the court, the court adjudged the defendant guilty as charged and convicted and ordered that: The defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of

Two (2) years, to run consecutive with sentence imposed in 77-CR-83.

**It is Further Ordered that the Court be furnished with a 90 day
progress report.**

SPECIAL
CONDITIONS
OF
PROBATION

ADDITIONAL
CONDITIONS
OF
PROBATION

In addition to the special conditions of probation imposed above, it is hereby ordered that the general conditions of probation set out on the reverse side of this judgment be imposed. The Court may change the conditions of probation, reduce or extend the period of probation, and at any time during the probation period or within a maximum probation period of five years permitted by law, may issue a warrant and revoke probation for a violation occurring during the probation period.

COMMITMENT
RECOMMEN-
DATION

The court orders commitment to the custody of the Attorney General and recommends,
placement at the FCI, at Seagoville, Oklahoma

It is ordered that the Clerk deliver a certified copy of this judgment and commitment to the U.S. Marshal or other qualified officer.

SIGNED BY

☒ U.S. District Judge

☐ U.S. Magistrate

CERTIFIED AS A TRUE COPY ON

THIS DATE

By

() CLERK

() DEPUTY

Date

3-21-78

DEFENDANT

BOBBY DALE SMITH

DOCKET NO.

77-CR-125-B

JUDGMENT AND PROBATION/COMMITMENT ORDER

AO 245 (6/74)

COUNSEL

In the presence of the attorney for the government the defendant appeared in person on this date

MONTH DAY YEAR
3 21 78

☐ WITHOUT COUNSEL

However the court advised defendant of right to counsel and asked whether defendant desired to have counsel appointed by the court and the defendant thereupon waived assistance of counsel.

☒ WITH COUNSEL

Fred Boss, Appt.

(Name of counsel)

FILED

PLEA

☒ GUILTY, and the court being satisfied that there is a factual basis for the plea,

☐ NOLO CONTENDERE,

☐ NOT GUILTY, **MAR 21 1978**

There being a finding/verdict of

☐ NOT GUILTY. Defendant is discharged

☒ GUILTY.

Jack C. Silver, Clerk
U. S. DISTRICT COURT

FINDING & JUDGMENT

Defendant has been convicted as charged of the offense(s) of **having violated Title 18, U.S.C., Section 1202(a), as charged in Count one of the Indictment.**

SENTENCE OR PROBATION ORDER

The court asked whether defendant had anything to say why judgment should not be pronounced. Because no sufficient cause to the contrary was shown, or appeared to the court, the court adjudged the defendant guilty as charged and convicted and ordered that: The defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of

Thirty-six (36) months, and on the condition that the defendant be confined in a jail type institution for a period of Six (6) months, the execution of the remainder of the sentence of imprisonment is hereby suspended and the defendant is placed on probation for Thirty (30) months, following incarceration.

SPECIAL CONDITIONS OF PROBATION

ADDITIONAL CONDITIONS OF PROBATION

In addition to the special conditions of probation imposed above, it is hereby ordered that the general conditions of probation set out on the reverse side of this judgment be imposed. The Court may change the conditions of probation, reduce or extend the period of probation, and at any time during the probation period or within a maximum probation period of five years permitted by law, may issue a warrant and revoke probation for a violation occurring during the probation period.

COMMITMENT RECOMMENDATION

The court orders commitment to the custody of the Attorney General and recommends,

It is ordered that the Clerk deliver a certified copy of this judgment and commitment to the U.S. Marshal or other qualified officer.

SIGNED BY

☒ U.S. District Judge

☐ U.S. Magistrate

CERTIFIED AS A TRUE COPY ON

THIS DATE

By

() CLERK

() DEPUTY

Date **3-21-78**

United States of America vs.

United States District Court for

DEFENDANT

BOBBY DALE SMITH

NORTHERN DISTRICT OF OKLAHOMA

DOCKET NO.

77-CR-109-B

JUDGMENT AND PROBATION/COMMITMENT ORDER

AO-245 (6/74)

COUNSEL

In the presence of the attorney for the government the defendant appeared in person on this date

MONTH 3 DAY 21 YEAR 78

☐ WITHOUT COUNSEL

However the court advised defendant of right to counsel and asked whether defendant desired to have counsel appointed by the court and the defendant thereupon waived assistance of counsel.

☒ WITH COUNSEL

Fred L. Boss, Appt.

(Name of counsel)

FILED

PLEA

☒ GUILTY, and the court being satisfied that there is a factual basis for the plea,

☐ NOLO CONTENDERE,

MAR 21 1978

Jack C. Silver, Clerk
U. S. DISTRICT COURT

FINDING &
JUDGMENT

There being a finding/verdict of ☐ NOT GUILTY. Defendant is discharged
☒ GUILTY.

Defendant has been convicted as charged of the offense(s) of **having violated Title 18, U.S.C., Section 922(a)(6), as charged in Count one of the Indictment.**

SENTENCE
OR
PROBATION
ORDER

The court asked whether defendant had anything to say why judgment should not be pronounced. Because no sufficient cause to the contrary was shown, or appeared to the court, the court adjudged the defendant guilty as charged and convicted and ordered that: The defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of

Two (2) years.

SPECIAL
CONDITIONS
OF
PROBATION

ADDITIONAL
CONDITIONS
OF
PROBATION

In addition to the special conditions of probation imposed above, it is hereby ordered that the general conditions of probation set out on the reverse side of this judgment be imposed. The Court may change the conditions of probation, reduce or extend the period of probation, and at any time during the probation period or within a maximum probation period of five years permitted by law, may issue a warrant and revoke probation for a violation occurring during the probation period.

COMMITMENT
RECOMMEN-
DATION

The court orders commitment to the custody of the Attorney General and recommends,

It is ordered that the Clerk deliver a certified copy of this judgment and commitment to the U.S. Marshal or other qualified officer.

SIGNED BY

☒ U.S. District Judge

☐ U.S. Magistrate

CERTIFIED AS A TRUE COPY ON

THIS DATE

By

() CLERK

() DEPUTY

Date 3-21-78

Jack C. Silver, Clerk
U. S. DISTRICT COURT

Movant.

NOS. 78-C-32-B
75-CR-137

The Court has for consideration a motion pursuant to 28 U.S.C. § 2255 filed pro se, in forma pauperis, by the Movant, Harold Louis Boyd. Movant is a prisoner at the Federal Correctional Institution, El Reno, Oklahoma, pursuant to conviction in Case No. 75-CR-137 upon his plea of guilty to an information charging interstate transportation of a known falsely made and forged security in violation of 18 U.S.C. § 2314, filed in the Western District of Oklahoma and transferred to this District pursuant to Rule 20, Federal Rules of Criminal Procedure. He was sentenced therein on the 7th day of October, 1975, to three years imprisonment eligible for parole as the Parole Commission might determine pursuant to 18 U.S.C. § 4208(a)(2). At the same time, Movant pled guilty in Case No. 75-CR-138, to Count One of an indictment in the Northern District of Oklahoma, also charging a violation of 18 U.S.C. § 2314, and a similar charge in Count Two of that indictment was dismissed. In this latter case, on October 7, 1975, the imposition of sentence was suspended and the Movant was placed on probation for two years to begin at the expiration of the sentence imposed in Case No. 75-CR-137. Movant in his present § 2255 motion challenges only the conviction and sentence in Case No. 75-CR-137.

Movant in his § 2255 motion demands his release from custody and as grounds therefor claims that he is being deprived of his liberty in violation of his rights guaranteed by the Constitution of the United States of America. In particular, Movant claims that:

He was sentenced in the United States District Court for the Northern District of Oklahoma on October 7, 1975. He was later on December 12, 1975, sentenced to five years for uttering a forged instrument in the District Court of Tulsa County, State of Oklahoma, and he was discharged on the State sentence on November 28, 1977, and delivered to the Federal institution to commence service of his Federal sentence. Since the Judgment and Commitment in the Federal Court did not provide that the Federal sentence was to run consecutively to the State sentence, Movant claims a right to credit on the Federal sentence for the time served in State custody.

Further, Movant requests that if the Court does not substantiate his contentions, that he be allowed to submit a memorandum of law supporting his § 2255 motion prior to its denial. Movant has been given this opportunity and he has not availed himself of it.

Having carefully reviewed the motion and criminal files, and being fully advised in the premises, the Court finds that there is no necessity for response, appointment of counsel, or evidentiary hearing, and the motion should be overruled and the case dismissed.

Should his motion be treated as a request for modification of sentence pursuant to Rule 35, Federal Rules of Criminal Procedure, it is out of time. The jurisdictional period of 120 days from the date sentence is imposed within which a Rule 35 motion may be considered long ago expired.

Treating the instrument before the Court as a § 2255 motion, it is without merit.

It is true that sentences on Federal charges in separate counts, or in separate cases, are presumed to run concurrently absent specific provisions to the contrary. Owensby v. United States, 385 F.2d 58 (10th Cir. 1967); Subas v. Hudspeth, 122 F.2d 85 (10th Cir. 1941). However, this rule of "presumptive concurrence" is not applicable where one sentence is imposed by a State Court and the other by a Federal Court. Verdigo v. Willingham, 198 F.Supp. 748 (M.D.Pa. 1961) affirmed 295 F.2d 506 (3rd Cir. 1961); Gomori v. Arnold, 533 F.2d 871 (3rd Cir. 1976); also see, Joslin v. Moseley, 420 F.2d 1204 (10th Cir. 1969).

Frequently, a State waives its right to its exclusive custody of a state prisoner in order that the United States might try him upon a Federal indictment. Then, the Defendant, on a plea of guilty, is sentenced by the Federal District Court and returned to the custody of the State. Thereafter, he is turned over to a United States Marshal by the State authorities and delivered to the warden of the Federal penitentiary, pursuant to commitment under the Federal sentence. The Federal sentence begins to run on such delivery to the United States Marshal. Rohr v. Hudspeth, 105 F.2d 747 (10th Cir. 1939); Lunsford v. Hudspeth, 126 F.2d 653 (10th Cir. 1942).

IT IS, THEREFORE, ORDERED that the motion pursuant to 28 U.S.C.
§ 2255 of Harold Louis Boyd be and it is hereby overruled and the cause
is dismissed.

Dated this 21st day of March, 1978, at Tulsa, Oklahoma.

Robert L. Edwards
CHIEF JUDGE, UNITED STATES DISTRICT
COURT FOR THE NORTHERN DISTRICT OF
OKLAHOMA

MAR 21 1978

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

Jack C. Silver, Clerk
U. S. DISTRICT COURT

UNITED STATES OF AMERICA,

Plaintiff,

v.

HAROLD LOUIS BOYD, # 40703-115,

Movant.

NOS. 78-C-32-B
75-CR-137

O R D E R

The Court has for consideration a motion pursuant to 28 U.S.C. § 2255 filed pro se, in forma pauperis, by the Movant, Harold Louis Boyd. Movant is a prisoner at the Federal Correctional Institution, El Reno, Oklahoma, pursuant to conviction in Case No. 75-CR-137 upon his plea of guilty to an information charging interstate transportation of a known falsely made and forged security in violation of 18 U.S.C. § 2314, filed in the Western District of Oklahoma and transferred to this District pursuant to Rule 20, Federal Rules of Criminal Procedure. He was sentenced therein on the 7th day of October, 1975, to three years imprisonment eligible for parole as the Parole Commission might determine pursuant to 18 U.S.C. § 4208(a)(2). At the same time, Movant pled guilty in Case No. 75-CR-138, to Count One of an indictment in the Northern District of Oklahoma, also charging a violation of 18 U.S.C. § 2314, and a similar charge in Count Two of that indictment was dismissed. In this latter case, on October 7, 1975, the imposition of sentence was suspended and the Movant was placed on probation for two years to begin at the expiration of the sentence imposed in Case No. 75-CR-137. Movant in his present § 2255 motion challenges only the conviction and sentence in Case No. 75-CR-137.

Movant in his § 2255 motion demands his release from custody and as grounds therefor claims that he is being deprived of his liberty in violation of his rights guaranteed by the Constitution of the United States of America. In particular, Movant claims that:

He was sentenced in the United States District Court for the Northern District of Oklahoma on October 7, 1975. He was later on December 12, 1975, sentenced to five years for uttering a forged instrument in the District Court of Tulsa County, State of Oklahoma, and he was discharged on the State sentence on November 28, 1977, and delivered to the Federal institution to commence service of his Federal sentence. Since the Judgment and Commitment in the Federal Court did not provide that the Federal sentence was to run consecutively to the State sentence, Movant claims a right to credit on the Federal sentence for the time served in State custody.

Further, Movant requests that if the Court does not substantiate his contentions, that he be allowed to submit a memorandum of law supporting his § 2255 motion prior to its denial. Movant has been given this opportunity and he has not availed himself of it.

Having carefully reviewed the motion and criminal files, and being fully advised in the premises, the Court finds that there is no necessity for response, appointment of counsel, or evidentiary hearing, and the motion should be overruled and the case dismissed.

Should his motion be treated as a request for modification of sentence pursuant to Rule 35, Federal Rules of Criminal Procedure, it is out of time. The jurisdictional period of 120 days from the date sentence is imposed within which a Rule 35 motion may be considered long ago expired.

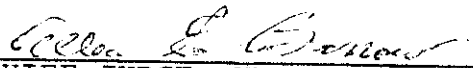
Treating the instrument before the Court as a § 2255 motion, it is without merit.

It is true that sentences on Federal charges in separate counts, or in separate cases, are presumed to run concurrently absent specific provisions to the contrary. Owensby v. United States, 385 F.2d 58 (10th Cir. 1967); Subas v. Hudspeth, 122 F.2d 85 (10th Cir. 1941). However, this rule of "presumptive concurrence" is not applicable where one sentence is imposed by a State Court and the other by a Federal Court. Verdigo v. Willingham, 198 F.Supp. 748 (M.D.Pa. 1961) affirmed 295 F.2d 506 (3rd Cir. 1961); Gomori v. Arnold, 533 F.2d 871 (3rd Cir. 1976); also see, Joslin v. Moseley, 420 F.2d 1204 (10th Cir. 1969).

Frequently, a State waives its right to its exclusive custody of a state prisoner in order that the United States might try him upon a Federal indictment. Then, the Defendant, on a plea of guilty, is sentenced by the Federal District Court and returned to the custody of the State. Thereafter, he is turned over to a United States Marshal by the State authorities and delivered to the warden of the Federal penitentiary, pursuant to commitment under the Federal sentence. The Federal sentence begins to run on such delivery to the United States Marshal. Rohr v. Hudspeth, 105 F.2d 747 (10th Cir. 1939); Lunsford v. Hudspeth, 126 F.2d 653 (10th Cir. 1942).

IT IS, THEREFORE, ORDERED that the motion pursuant to 28 U.S.C.
§ 2255 of Harold Louis Boyd be and it is hereby overruled and the cause
is dismissed.

Dated this 21st day of March, 1978, at Tulsa, Oklahoma.



CHIEF JUDGE, UNITED STATES DISTRICT
COURT FOR THE NORTHERN DISTRICT OF
OKLAHOMA

United States of America vs.

United States District Court for

NORTHERN DISTRICT OF OKLAHOMA

DEFENDANT

WILLIAM EDWARD WELCH, JR.

DOCKET NO.

78-CR-9-B

JUDGMENT AND PROBATION/COMMITMENT ORDER

AO-245 (6/74)

In the presence of the attorney for the government
the defendant appeared in person on this date

MONTH DAY YEAR
3 16 78

COUNSEL

☐ WITHOUT COUNSEL

However the court advised defendant of right to counsel and asked whether defendant desired to have counsel appointed by the court and the defendant thereupon waived assistance of counsel.

☒ WITH COUNSEL Fred Cornish, Appt.

(Name of counsel)

PLEA

☒ GUILTY, and the court being satisfied that
there is a factual basis for the plea,

☐ NOLO CONTENDERE,

☐ NOT GUILTY

MAR 16 1978

Jack C. Silver, Clerk
U.S. DISTRICT COURT

FINDING &
JUDGMENT

There being a finding/verdict of ☐ NOT GUILTY. Defendant is discharged
☒ GUILTY.

Defendant has been convicted as charged of the offense(s) of **having violated Title 18, U.S.C.,
Section 1001, as charged in the indictment.**

SENTENCE
OR
PROBATION
ORDER

The court asked whether defendant had anything to say why judgment should not be pronounced. Because no sufficient cause to the contrary was shown, or appeared to the court, the court adjudged the defendant guilty as charged and convicted and ordered that: ~~Indefinite~~

The imposition of sentence is suspended and the defendant is hereby placed on probation for a period of two (2) years from this date, under the Federal Youth Correction Act, pursuant to T. 18, U.S.C., Section 5010(a).

SPECIAL
CONDITIONS
OF
PROBATION

ADDITIONAL
CONDITIONS
OF
PROBATION

In addition to the special conditions of probation imposed above, it is hereby ordered that the general conditions of probation set out on the reverse side of this judgment be imposed. The Court may change the conditions of probation, reduce or extend the period of probation, and at any time during the probation period or within a maximum probation period of five years permitted by law, may issue a warrant and revoke probation for a violation occurring during the probation period.

The court orders commitment to the custody of the Attorney General and recommends,

COMMITMENT
RECOMMEN-
DATION

It is ordered that the Clerk deliver a certified copy of this judgment and commitment to the U.S. Marshal or other qualified officer.

SIGNED BY

☒ U.S. District Judge

~~U.S. Magistrate~~

CERTIFIED AS A TRUE COPY ON

THIS DATE

By

() CLERK

() DEPUTY

Date 3-16-78

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

FILED

MAR 16 1978

Jack C. Silver, Clerk
U. S. DISTRICT COURT

JAMES C. BOONE, # 93623,)
Movant,)
v.)
UNITED STATES OF AMERICA,)
Respondent.)

Nos. 77-C-434-C
76-CR-113 ✓

ORDER

The Court has for consideration Motion to Reconsider pursuant to 28 U.S.C. § 2255 filed pro se by James C. Boone.

On December 30, 1977 this Court entered an Order denying Movant's Motion under 28 U.S.C. § 2255. At the time the Order was entered the Movant was a prisoner at the Regional Treatment Center at Lexington, Oklahoma. From a review of the file, it appears that since the filing of Movant's Motion to Reconsider, Movant has been released from the Regional Treatment Center and is now serving the special parole term of 6 years.

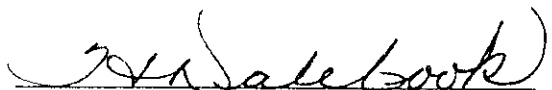
In his Motion to Reconsider, Movant has not stated any grounds for reconsideration other than those set forth in his original motion.

Title 28 U.S.C.A. § 2255 provides in part as follows:

"The sentencing court shall not be required to entertain a second or successive motion for similar relief on behalf of the same prisoner."

Therefore, Movant's Motion to Reconsider is denied.

IT IS SO ORDERED this 16th day of March, 1978.


H. DALE COOK
UNITED STATES DISTRICT JUDGE

FILED

MAR 16 1978

Jack C. Silver, Clerk
U. S. DISTRICT COURT

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

United States of America)
vs)
VERNON DALE NEEL)

73-CR-27-B ✓

REVOCATION OF PROBATION

On April 17, 1973, came the attorney for the government and the defendant appeared in person and by counsel Ainslie Perrault, Jr.

IT WAS ADJUDGED that the defendant, upon his plea of guilty had been convicted of having violated Title 18, U.S.C., Section 2314, as charged in Counts one and two of the Indictment.

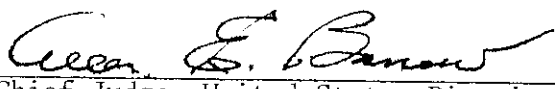
IT WAS ADJUDGED that the defendant was guilty as charged and he was convicted.

IT WAS ADJUDGED that the imposition of sentence be suspended and the defendant was placed on probation for a period of Five (5) years as to Counts one and two, Count two to run concurrently with Count one, pursuant to the Federal Youth Correction Act, Title 18, U.S.C., 5010(a).

Now, on this 16th day of March, 1978, came the attorney for the government and the defendant appeared with counsel, David Peterson. It being shown to the Court that the defendant has violated the terms and conditions of said probation,

IT IS ADJUDGED that the Order of probation entered on April 17, 1973, be revoked and set aside and the defendant is committed to the custody of the Attorney General for eighteen (18) months and further ordered that the defendant may become eligible for parole at such time as Parole Commission may determine as provided in Title 18, U.S.C., Section 4205(b)(2), as to Count one. As to Count two the imposition of sentence is suspended and the defendant is placed on probation for a period of three (3) years, following incarceration in Count one.

IT IS ORDERED that the Clerk deliver a certified copy of this judgment and commitment to the United States Marshal or other qualified officer and that the copy serve as the commitment of the defendant.



Chief Judge, United States District Court
For the Northern District of Oklahoma

FILED

MAR 15 1978

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

Jack C. Silver, Clerk
U. S. DISTRICT COURT

UNITED STATES OF AMERICA,)	
	Plaintiff,)
v.)	NO. 76-CR-70
)	
BILL P. SEELY,)	
	Defendant.)

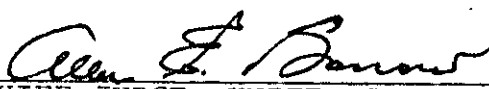
O R D E R

The Court has for consideration a motion pursuant to Rule 35, Federal Rules of Criminal Procedure, timely filed by counsel on behalf of the Defendant, after receipt of the mandate issued upon affirmance of the judgment on appeal.

Having studied the motion, carefully reviewed the file, and reflected on the sentence of Bill P. Seely herein, and being fully advised in the premises, the Court finds that the sentence, under the circumstances before the Court, was lenient and proper, and the motion for modification of sentence should be denied.

IT IS, THEREFORE, ORDERED that the motion for discretionary modification of the sentence of Bill P. Seely be and it is hereby overruled.

Dated this 15th day of March, 1978, at Tulsa, Oklahoma.


CHIEF JUDGE, UNITED STATES DISTRICT
COURT FOR THE NORTHERN DISTRICT OF
OKLAHOMA

MAR 1 1978

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

Jack C. Silver, Clerk
U. S. DISTRICT COURT

ROBERT JERRY LEE, # 93690,

Movant,

v.

ROGERS COUNTY JAIL, et al.,

Respondents.

NOS. 77-C-450-B ✓
76-CR-142 ✓

O R D E R

The Court has for consideration the pro se, in forma pauperis, motion pursuant to 28 U.S.C. § 2255 filed by Robert Jerry Lee. The cause has been assigned civil Case No. 77-C-450-B and docketed in his criminal Case No. 76-CR-142.

Movant is a prisoner in the Lexington Regional Treatment Center, Lexington, Oklahoma, serving sentences from the State of Oklahoma. Thereafter, he is to serve a sentence imposed by this Court on November 11, 1976, to three years imprisonment, pursuant to his conviction upon his plea of guilty to a one-count indictment charging a Dyer Act in violation of 18 U.S.C. § 2312. Movant has filed three motions pursuant to Rule 35, Federal Rules of Criminal Procedure, for modification of sentence which were overruled by Orders of this Court dated November 22, and December 9, 1976, and April 13, 1977. The latter Order denied his motion filed out of time, after the jurisdictional period for a Rule 35 motion had expired.

Movant in his § 2255 motion demands his release from conviction and sentence of this Court and as grounds therefor claims that this Court was without jurisdiction to prosecute and sentence him in Case No. 76-CR-142. In particular, Movant asserts that he was arrested by police officers in Claremore, Oklahoma, on October 2, 1976, and that because he was then informed that he was not bailable because he was a Federal parole violator from Illinois, he was at all times from date of arrest a Federal prisoner. Therefore, because he was brought to this Federal Court for appointment of counsel, arraignment and plea, and sentence, in Case No. 76-CR-142, and on each occasion returned to the Rogers County Jail to stand trial on the State proceedings against him and to serve the State sentences first in time, this Court gave up and lost jurisdiction to convict and sentence him.

His contention is without merit and his § 2255 motion should be denied and the case dismissed. His motion for subpoena duces tecum of the Rogers County Jail booking records of Robert Jerry Lee on October 2, 1976, is moot, said records before the Court as exhibits to the response, and that motion should be overruled. His motion to expedite hearing on the allegations should be overruled as no hearing is required herein.

Movant was arrested October 2, 1976, and held in the custody of the State of Oklahoma pending proceedings on State charges in three cases, CRF-76-195, CRF-76-208, and CRF-76-212; CRF-76-195 filed October 6, 1976. Even if he had been arrested on the Illinois Federal parole violator's warrant, he was in State custody until picked up by the Federal authorities. Therefore, his argument regarding the jurisdiction of this Court must fail.

A Federal complaint charging a Dyer Act was filed October 5, 1976, in this United States District Court for the Northern District of Oklahoma, however, the warrant of arrest thereon was returned October 14, 1976, "Unexecuted: Indictment Warrant Issued." The Dyer Act Indictment was filed October 13, 1976, and the arrest warrant thereon was returned November 4, 1976, "unexecuted handled on WHCAP." Movant on each occasion, for appointment of counsel, arraignment and plea, and sentence, on the Federal indictment before this Court was borrowed from the State of Oklahoma on writ of habeas corpus ad prosequendum.

Frequently, a State waives its right to its exclusive custody of a State prisoner in order that the United States might try him upon a Federal indictment. Then, the Defendant, on a plea of guilty, is sentenced by the Federal District Court and returned to the custody of the State. Thereafter, he is turned over to a United States Marshal by the State authorities and delivered to the warden of the Federal penitentiary, pursuant to commitment under the Federal sentence. The Federal sentence begins to run on such delivery to the United States Marshal. Rohr v. Hudspeth, 105 F.2d 747 (10th Cir. 1939); Lunsford v. Hudspeth, 126 F.2d 653 (10th Cir. 1942).

A sovereign having prior and exclusive jurisdiction and custody of a person for violation of its penal laws may voluntarily surrender him for purpose of trial on a criminal charge, and, in such circumstances,

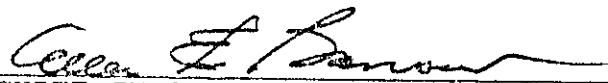
the question of jurisdiction and custody is essentially one of comity between the sovereigns and not a personal right of the individual. Stamphill v. United States, 135 F.2d 177 (10th Cir. 1943); Jones v. Taylor, 327 F.2d 493 (10th Cir. 1964). It is well established in the Tenth Circuit, that a State could waive its right to custody and release a prisoner to Federal authorities for prosecution without losing or waiving the right to further enforce the State sentences. See, Joslin v. Moseley, 420 F.2d 1204 (10th Cir. 1970); Jacobs v. Crouse, 349 F.2d 857 (10th Cir. 1965); Hall v. Looney, 256 F.2d 59 (10th Cir. 1958).

Further, Movant may not rely on the Interstate Agreement on Detainers Act. The State of Oklahoma did not become a party State to the Act until October 1, 1977, which was after Movant's conviction and sentence in Case No. 76-CR-142. Also, as set out in Article III of the Act, those provisions come into play only upon "written notice" and "request" of a person who "has entered upon a term of imprisonment in a penal or correctional institution of a party State." Movant made no such written notice of his place of imprisonment or request to the United States Attorney and this Federal Court for a final disposition to be made of the indictment pending against him in this Northern District of Oklahoma.

IT IS, THEREFORE, ORDERED that the motion for subpoena duces tecum is overruled as moot and the motion to expedite hearing is overruled.

IT IS FURTHER ORDERED that the motion pursuant to 28 U.S.C. § 2255 of Robert Jerry Lee be and it is hereby denied and the case is dismissed.

Dated this 1st day of March, 1978, at Tulsa, Oklahoma.


CHIEF JUDGE, UNITED STATES DISTRICT
COURT FOR THE NORTHERN DISTRICT OF
OKLAHOMA

MAR 1 1978

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMAJack C. Silver, Clerk
U. S. DISTRICT COURT

ROBERT JERRY LEE, # 93690,

Movant,

v.

ROGERS COUNTY JAIL, et al.,

Respondents.

NOS. 77-C-450-B
76-CR-142O R D E R

The Court has for consideration the pro se, in forma pauperis, motion pursuant to 28 U.S.C. § 2255 filed by Robert Jerry Lee. The cause has been assigned civil Case No. 77-C-450-B and docketed in his criminal Case No. 76-CR-142.

Movant is a prisoner in the Lexington Regional Treatment Center, Lexington, Oklahoma, serving sentences from the State of Oklahoma. Thereafter, he is to serve a sentence imposed by this Court on November 11, 1976, to three years imprisonment, pursuant to his conviction upon his plea of guilty to a one-count indictment charging a Dyer Act in violation of 18 U.S.C. § 2312. Movant has filed three motions pursuant to Rule 35, Federal Rules of Criminal Procedure, for modification of sentence which were overruled by Orders of this Court dated November 22, and December 9, 1976, and April 13, 1977. The latter Order denied his motion filed out of time, after the jurisdictional period for a Rule 35 motion had expired.

Movant in his § 2255 motion demands his release from conviction and sentence of this Court and as grounds therefor claims that this Court was without jurisdiction to prosecute and sentence him in Case No. 76-CR-142. In particular, Movant asserts that he was arrested by police officers in Claremore, Oklahoma, on October 2, 1976, and that because he was then informed that he was not bailable because he was a Federal parole violator from Illinois, he was at all times from date of arrest a Federal prisoner. Therefore, because he was brought to this Federal Court for appointment of counsel, arraignment and plea, and sentence, in Case No. 76-CR-142, and on each occasion returned to the Rogers County Jail to stand trial on the State proceedings against him and to serve the State sentences first in time, this Court gave up and lost jurisdiction to convict and sentence him.

His contention is without merit and his § 255 motion should be denied and the case dismissed. His motion for subpoena duces tecum of the Rogers County Jail booking records of Robert Jerry Lee on October 2, 1976, is moot, said records before the Court as exhibits to the response, and that motion should be overruled. His motion to expedite hearing on the allegations should be overruled as no hearing is required herein.

Movant was arrested October 2, 1976, and held in the custody of the State of Oklahoma pending proceedings on State charges in three cases, CRF-76-195, CRF-76-208, and CRF-76-212; CRF-76-195 filed October 6, 1976. Even if he had been arrested on the Illinois Federal parole violator's warrant, he was in State custody until picked up by the Federal authorities. Therefore, his argument regarding the jurisdiction of this Court must fail.

A Federal complaint charging a Dyer Act was filed October 5, 1976, in this United States District Court for the Northern District of Oklahoma, however, the warrant of arrest thereon was returned October 14, 1976, "Unexecuted: Indictment Warrant Issued." The Dyer Act Indictment was filed October 13, 1976, and the arrest warrant thereon was returned November 4, 1976, "unexecuted handled on WHCAP." Movant on each occasion, for appointment of counsel, arraignment and plea, and sentence, on the Federal indictment before this Court was borrowed from the State of Oklahoma on writ of habeas corpus ad prosequendum.

Frequently, a State waives its right to its exclusive custody of a State prisoner in order that the United States might try him upon a Federal indictment. Then, the Defendant, on a plea of guilty, is sentenced by the Federal District Court and returned to the custody of the State. Thereafter, he is turned over to a United States Marshal by the State authorities and delivered to the warden of the Federal penitentiary, pursuant to commitment under the Federal sentence. The Federal sentence begins to run on such delivery to the United States Marshal. Rohr v. Hudspeth, 105 F.2d 747 (10th Cir. 1939); Lunsford v. Hudspeth, 126 F.2d 653 (10th Cir. 1942).

A sovereign having prior and exclusive jurisdiction and custody of a person for violation of its penal laws may voluntarily surrender him for purpose of trial on a criminal charge, and, in such circumstances,


the question of jurisdiction and custody is essentially one of comity between the sovereigns and not a personal right of the individual. Stamphill v. United States, 135 F.2d 177 (10th Cir. 1943); Jones v. Taylor, 327 F.2d 493 (10th Cir. 1964). It is well established in the Tenth Circuit, that a State could waive its right to custody and release a prisoner to Federal authorities for prosecution without losing or waiving the right to further enforce the State sentences. See, Joslin v. Moseley, 420 F.2d 1204 (10th Cir. 1970); Jacobs v. Crouse, 349 F.2d 857 (10th Cir. 1965); Hall v. Looney, 256 F.2d 59 (10th Cir. 1958).

Further, Movant may not rely on the Interstate Agreement on Detainers Act. The State of Oklahoma did not become a party State to the Act until October 1, 1977, which was after Movant's conviction and sentence in Case No. 76-CR-142. Also, as set out in Article III of the Act, those provisions come into play only upon "written notice" and "request" of a person who "has entered upon a term of imprisonment in a penal or correctional institution of a party State." Movant made no such written notice of his place of imprisonment or request to the United States Attorney and this Federal Court for a final disposition to be made of the indictment pending against him in this Northern District of Oklahoma.

IT IS, THEREFORE, ORDERED that the motion for subpoena duces tecum is overruled as moot and the motion to expedite hearing is overruled.

IT IS FURTHER ORDERED that the motion pursuant to 28 U.S.C. § 2255 of Robert Jerry Lee be and it is hereby denied and the case is dismissed.

Dated this 1st day of March, 1978, at Tulsa, Oklahoma.


CHIEF JUDGE, UNITED STATES DISTRICT
COURT FOR THE NORTHERN DISTRICT OF
OKLAHOMA

MAR 1 1978

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMAJack C. Silver, Clerk
U. S. DISTRICT COURT

UNITED STATES OF AMERICA,

Plaintiff,

v.

NOS. 77-C-493-B

ODEAN RAY LAWSON, # 00056-165,

Movant.

76-CR-129-B

O R D E R

The Court has for consideration a pro se, in forma pauperis motion pursuant to 28 U.S.C. § 2255 filed by Odean Ray Lawson. The cause has been assigned civil case No. 77-C-493-B and docketed in his criminal case No. 76-CR-129-B.


Movant is a prisoner in the Leavenworth Camp, Leavenworth, Kansas, pursuant to conviction by this Court on his plea of guilty to an indictment charging Count One, mail theft in violation of 18 U.S.C. § 1702; and Count Two, forgery of a United States Treasury check in violation of 18 U.S.C. § 495. On November 23, 1976, he was sentenced on Count One to three years imprisonment eligible for parole as the Parole Commission might determine pursuant to 18 U.S.C. § 4205(b)(2), and on Count Two imposition of sentence was suspended and he was placed on three years' probation. Motions for discretionary modification of sentence pursuant to Rule 35, Federal Rules of Criminal Procedure, were overruled by Orders of the Court dated February 2 and 14, 1977.

Movant does not in any way challenge the validity of his plea, conviction and sentence in this Court. Rather, he challenges the Parole Commission's application of its guidelines to his case which is an administrative responsibility unrelated to the sentencing process. His appropriate remedy on that issue is to file a habeas corpus petition pursuant to 28 U.S.C. § 2241 in the United States District Court having jurisdiction over his place of confinement, and that only after available administrative remedies have first been exhausted. See, Rogers v. United States, No. 76-1122 (10th Cir. filed Nov. 2, 1976); Weiser v. United States, No. 76-1589 (10th Cir. filed Feb. 10, 1977), which cases are applicable to establish the appropriate procedure in regard to the issue raised herein to this Court although they deal with a different factual claim than here presented.

Having carefully reviewed the motion and attachments thereto, including Movant's "Deliberate Letter" and being fully advised in the premises, the Court finds that there is no necessity for an evidentiary hearing herein; and the motion pursuant to 28 U.S.C. § 2255 in this Northern District of Oklahoma should be overruled and denied.

IT IS, THEREFORE, ORDERED that the motion pursuant to 28 U.S.C. § 2255 of Odean Ray Lawson be and it is hereby overruled and the case is dismissed without prejudice to his filing a habeas corpus petition in the proper jurisdiction in Kansas, if necessary, after administrative remedies have been exhausted.

Dated this 1st day of March, 1978, at Tulsa, Oklahoma.


CHIEF JUDGE, UNITED STATES DISTRICT
COURT FOR THE NORTHERN DISTRICT OF
OKLAHOMA

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

MAR 1 1978

BOBBY JOE EVANS, # 23103-175,

Movant,

v.

UNITED STATES OF AMERICA,

Respondent.

) NOS. 77-C-431-B
) 76-CR-65Jack C. Silver, Clerk
U. S. DISTRICT COURTO R D E R

The Court has for consideration a motion pursuant to 28 U.S.C. § 2255 filed pro se, in forma pauperis, by Bobby Joe Evans. The cause has been assigned civil Case No. 77-C-431-B and docketed in his criminal Case No. 77-CR-65.

Movant is a prisoner in the United States Penitentiary, Leavenworth, Kansas, pursuant to conviction upon his plea of guilty to Counts One and Two of the nine-count indictment, each count charging the transportation in interstate commerce from Tulsa, Oklahoma, to Dallas, Texas, of a known stolen firearm in violation of 18 U.S.C. § 922(i). Counts Three through Nine were dismissed in accordance with a plea agreement. On July 20, 1976, Movant was sentenced on Count One to five years to run concurrently with a State sentence then being served; and on Count Two to five years eligible for parole as the Parole Commission might determine as provided in 18 U.S.C. § 4205(b)(2), the sentence on Count Two to run consecutively to the sentence on Count One.

Movant in his § 2255 motion demands his release from custody and as grounds therefor claims that he is being deprived of his liberty in violation of his rights guaranteed by the Constitution of the United States of America. In particular, Movant claims that:

1. The Federal Government lost jurisdiction to impose a sentence on Movant when it failed to carry Movant's judgment to final conclusion before releasing custody to the State of Oklahoma.
2. Movant was given multiple punishment for each firearm involved in one interstate trip which is excessive punishment.

In support of his first contention, Movant asserts, and the Respondent admits, that he was brought to Federal Court on ad prosequendum writs for appointment of counsel, arraignment, and change of plea, and in each instance returned to the custody of the State of Oklahoma where he was facing State charges for auto theft and burglary. When he appeared in Federal Court on July 20, 1976, for sentencing, he was not in

Federal custody on a writ and he was thereafter delivered to the Federal penitentiary for service of his Federal sentence.

If Movant is relying on the provisions of the Interstate Agreement on Detainers Act, as Respondent indicates may be the case, the reliance is totally misplaced. The State of Oklahoma did not become a party State to the Act until October 1, 1977, which was after Movant's conviction and sentence in the cause he presently challenges. Further, as set out in Article III of the Act, its provisions come into play only upon "written notice" and "request" of a person who "has entered upon a term of imprisonment in a penal or correctional institution of a party State." Movant made no such written notice of his place of imprisonment or request to the United States Attorney and this Federal Court for a final disposition to be made of the indictment pending against him in this Northern District of Oklahoma.

The Federal statutes regarding sentencing applicable herein provide in pertinent part as follows:

18 U.S.C. § 3568: "The sentence of imprisonment of any person convicted of an offense shall commence to run from the date on which such person is received at the penitentiary, reformatory, or jail for service of such sentence. . . . No sentence shall prescribe any other method of computing the term."

18 U.S.C. § 4082: "(A) A person convicted of an offense against the United States shall be committed, for such term of imprisonment as the court may direct, to the custody of the Attorney General of the United States, who shall designate the place of confinement where the sentence shall be served."

Pursuant to these Federal Statutes, the Attorney General has the exclusive power to designate the place where Federal sentences shall be served. Stillwell v. Looney, 207 F.2d 359 (10th Cir. 1953); Werntz v. Looney, 208 F.2d 102, 103 n. 2 (10th Cir. 1953). The United States District Court must be cognizant of and give effect to all applicable United States statutes. Miller v. Willingham, 400 F.2d 873 (10th Cir. 1968). Our Tenth Circuit Court of Appeals has held that the place of confinement is no part of the sentence, but is a matter for the determination of the Attorney General; and therefore, that it is beyond the power of a Federal Court to order that its sentence be served concurrently with a State sentence. The concurrency language is surplusage or a recommendation as to place of confinement. It is equally clear that the initial concurrence, although beyond the power of the Court, does not render a Federal sentence

so imposed invalid. Bowen v. United States, 174 F.2d 323 (10th Cir. 1949); Joslin v. Moseley, 420 F.2d 1204 (10th Cir. 1969); Sluder v. Malley, No. 77-1454 unpublished (10th Cir. filed Dec. 22, 1977). The Attorney General has the discretion, may, and frequently does, honor the recommendation that the Federal sentence be served concurrently with a State sentence in a State institution. See, Stillwell v. Looney, Supra.; Werntz v. Looney, Supra. However, the Attorney General is under no obligation to do so and could disregard the sentencing Court's recommendation. See, Bowen v. United States, Supra. Therefore, the first issue raised by Movant is without merit.

Movant's second contention that he should have been charged in one count for the single interstate trip and not in multiple counts for each firearm transported appears to be on more sound footing. The Court must determine whether, under 18 U.S.C. § 922(i), the charging of a separate count for each firearm transported in one interstate trip is multiplicitous. If the separate counts are multiplicitous, the indictment does not have to be dismissed, but the pyramided sentences must be corrected. United States v. DeStafano, 429 F.2d 344, 348 (2nd Cir. 1970) cert. denied 402 U. S. 972 (1971).

18 U.S.C. § 922(i) provides: "It shall be unlawful for any person to transport or ship in interstate or foreign commerce, any stolen firearm or stolen ammunition, knowing or having reasonable cause to believe that the firearm or ammunition was stolen." The penalty provided by 18 U.S.C. § 924(a), for a violation of 18 U.S.C. § 922(i), is: "Whoever violates any provision of this chapter . . . shall be fined not more than \$5,000, or imprisoned not more than five years, or both, and shall become eligible for parole as the Board of Parole shall determine."

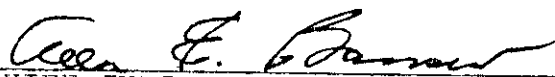
No Tenth Circuit decision has been found on the specific question of multiplicity, the charging of a single offense in several counts, under 18 U.S.C. § 922(i), as here involved. However, in regard to an indictment charging firearms offenses in violation of 18 U.S.C. § 922(k) and 26 U.S.C. §§ 5681(j) and 5871, the Tenth Circuit has reviewed a claim that each count was duplicitous, that is, that two or more distinct or separate offenses were charged in a single count. In that decision, United States v. Robideau, et al., Nos. 76-1698, 76-1699 and 76-1700 unreported (10th Cir. filed Nov. 14, 1977), the Court stated:

"Unlawful transportation is the gist of the offense. See Kelly v. United States, 10 Cir., 246 F.2d 864, 865, and Robinson v. United States, 10 Cir., 143 F.2d 276, 278. Each count relates to a single transportation. The constitutional base for the statute is the withdrawal of the facility of interstate commerce. See Bell v. United States, 349 U. S. 81, 83, in which the Court said that 'doubt will be resolved against turning a single transaction into multiple offenses.' Ibid. at 84. In the instant case each count charges one transportation of proscribed firearms. The claim of duplicity is without merit."

In the matter before the Court, and relying for guidance on Robideau, Bell v. United States, and United States v. Carty, 447 F.2d 964 (5th Cir. 1971), the latter case having dealt with the exact statute under consideration by this Court, the Court finds that Movant's conviction and sentence on two counts, each charging a violation of 18 U.S.C. § 922(i) for separate firearms transported in a single interstate trip is multiplicitous. Also see, Guffey v. United States, 310 F.2d 753 (10th Cir. 1962); McFarland v. Pickett, 469 F.2d 1277 (7th Cir. 1972). The conviction and sentence on Count Two of the indictment against Bobby Joe Evans, in Case No. 76-CR-65, should be set aside and held for naught.

IT IS, THEREFORE, ORDERED that the motion pursuant to 28 U.S.C. § 2255 of Bobby Joe Evans be and it is hereby sustained in that his conviction and sentence on Count Two of the indictment in Case No. 76-CR-65 be and it is set aside and held for naught, the said Bobby Joe Evans to suffer no detriment therefrom. The conviction and sentence to five years under Count One of the indictment remains as originally imposed. Further, the said Bobby Joe Evans shall become eligible for parole at such time as the Parole Commission may determine as provided in 18 U.S.C. § 4205(b)(2), and the Court recommends that the sentence be served concurrently with the State sentence he is to serve in the State of Oklahoma. Movant should seek the relief of a concurrent sentence, as recommended in the present Order and the original sentence, Judgment and Commitment, from the Attorney General of the United States.

Dated this 28th day of February, 1978, at Tulsa, Oklahoma.


CHIEF JUDGE, UNITED STATES DISTRICT
COURT FOR THE NORTHERN DISTRICT OF
OKLAHOMA